United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

No. 1735.
No. 1, Special Calendar.

CHRISTINA KLUTZ AND CHRISTINA V. GUIGAN, APPELLANTS,

vs.

FRANK JAEGER.

BRIEF FOR APPELLEE.

Statement of the Case.

Hannah Jaeger, late a citizen of the United States and a resident of the District of Columbia, departed this life on the 6th day of May, A. D. 1904. Shortly after her death, Frank Jaeger, the appellee in this case, and the husband of Hannah Jaeger, presented to the Probate Court of the District of Columbia, a paper writing claimed to be the last will and testament of Hannah Jaeger, deceased, bearing date the 21st day of April, A. D. 1904. Accompanying the will, the appellee presented his petition asking for probate, setting forth that the deceased had died on the 6th day of May, A. D. 1904; that she was possessed of personal property consisting of money in the Perpetual Building Association of the city of Washington, District of Columbia, amounting to about five

thousand dollars; that she also had a small amount of stock in a phonograph company of no present value, and that she was possessed of an interest in the umbrella business at 505 Eleventh street norwest, Washington, D. C., worth about one hundred dollars; that Hannah Jaeger was seized and possessed of a one-half interest in certain real property in the District of Columbia, the other half interest being held by petitioner as tenant in common with her, this real property consisting of house No. 819 Eighth street northwest, Washington, D. C., said to be worth about four thousand dollars, and house No. 505 Eleventh street northwest, Washington, D. C., said to be worth about eight hundred dollars; that deceased, also, as tenant in common with her sister, one of the appellants in this case, owned a half interest in house No. 507 Eleventh street northwest, the value of which was not given. The will in brief left all of the property, both real and personal, of which the deceased died, seized and possessed to appellee, the husband, Frank Jaeger. February 10, 1905, the appellants in this case, the mother and sister of deceased, presented their caveat, objecting to the admission to probate of the last will and testament referred to, raising the question first as to whether or not the paper writing was in fact the last will and testament of the deceased; second, whether at the time of the alleged execution of the paper writing, the deceased was capable of executing a valid deed or contract and was of a sound and disposing mind; third, that the paper writing was executed by the deceased, if at all, under the undue influence, persuasions and threats and coercions of Frank Jaeger, or of some other person or persons, and was not the free and voluntary act of the deceased. On May 29, 1906, the issues were framed for trial before jury in regard to the validity of the will. The issues referred to being as follows:

1. Was the said Hannah Jaeger, at the time of the execution of the alleged will of sound and disposing mind and was she capable of executing a valid deed or contract?

2. Is the paper writing the last will and testament of the said Hannah Jaeger, deceased?

3. Was the paper writing intended by the said Hannah Jaeger to be her last will and testament, and was it made and executed by her as such?

4. Was the said paper writing procured by the undue influence of said Frank Jaeger, or some other person or persons?

The third issue was subsequently eliminated and the fourth issue in the original list became number three. The trial was begun on May 29, 1906, before Mr. Justice Barnard and a jury in Criminal Court No. 2, and the factum of the will having been placed in issue, the court entered its order making the caveatee plaintiff and the caveators defendants. The caveatee produced witnesses to the will. Sanford B. Woodward and Courtlandt Boyer, who duly and properly proved the fact of the execution of the will and testified to the sound and disposing mind in their opinion held by the testatrix at the time of the making of the will. All the usual questions in regard to the making of the will being asked of these witnesses as such witnesses to the will. Thereupon, the caveatee rested, and the caveator produced a number of witnesses to endeavor to maintain the issues raised by them as to the invalidity of the paper writing. At the conclusion of the testimony for the caveators, upon motion of counsel for the caveatee, the court in a written opinion directed the rendering of a verdict upon all of the issues upon which trial was had by the jury, in favor of the caveatee, thereby sustaining the validity of the will.

ARGUMENT.

Counsel for the caveators have presented by their brief six alleged assignments of error as having been committed by the court below in the trial of this cause. In brief, this assignment of errors can be condensed under two heads, first, the alleged error on the part of the court in admitting or refusing to admit the unsworn hearsay alleged declarations of the deceased made sometime prior and sometime subsequent to the making of the will as to alleged feeling on her part in regard to her husband and in regard to allged testamentary ideas in her mind. Second, in instructing the jury that upon the whole evidence as presented by the caveators their verdict must be for the validity of the will. Upon the first proposition that as to whether it is proper to admit in a case like this the unsworn declarations or alleged declarations of a deceased not pretended to be part of the *res gestæ*, it must be remembered that not only was there no evidence adduced by the caveators in this case to impeachment or question the mental capacity of the deceased to make a will, and no evidence of any character to sustain or support the issue involved as to mental incapacity, but that on the other hand, the positive evidence of the witnesses to the will and of the physician who attended the deceased, was to the effect that deceased possessed mental faculties unimpaired so far as could be observed. Therefore, there was nothing to submit to the jury on this issue. As to the propriety of admitting the declarations referred to, it will be seen by an inspection of the record that a number of declarations or alleged declarations were admitted, and that the only declarations or alleged declarations as to feeling or intent that were refused admission were those that related to a time which could not possibly form part of the res gestæ of the

case, and it was clearly the duty of the judge to so rule in following the Supreme Court case of Throckmorton *vs.* Holt, in which after an exhaustive discussion of this subject, the court says:

> "After much reflection upon the subject, we are inclined to the opinion that not only is the weight of authority with the cases, which exclude evidence both before and after the execution, but the principles upon which our law of evidence is founded necessitate that exclusion. The declarations are purely hearsay, being merely unsworn declarations, and when no part of the res gestæ are not within any of the recognized exceptions admitting evidence of that kind. Although in some of the cases, the remark is made that declarations are admissible which tend to show the state of affections of the deceased as a mental condition, yet they are generally stated in cases where the mental capacity of the deceased is the subject of the inquiry, in those cases his declarations on that subject are just as likely to aid in answering the question as to mental capacity as those upon any other subject."
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> Throckmorton *vs.* Holt, vol. 180, U. S. Rep., page 552.

Eliminating, therefore, the issue of mental incapacity in this case as we must do under the evidence, there can clearly be no reason or ground upon which the declarations pretended to have been made by the deceased could have been admitted as evidence. Of course, it must be conceded that it will not do merely to interpose in a case of a contest in regard to a will the issue as to mental capacity and without producing any evidence whatever to sustain such issue to contend that by reason of the issue being present in the case the doors must be open for hearsay declarations of the character attempted to be introduced in this case. As to the second assignment of error or group which involves the second as we

have interpreted, we feel that we can not do better than to quote the succinct language used by the learned justice below in delivering his opinion thereon. The court said:

> "I think it is very doubtful if in this case there is testimony enough to go to the jury on any of these issues. Of course, the issue of undue influence is the one that has been attempted to be established by proof. But the law does not allow the jury to draw an inference of undue influence merely from the fact that a husband makes a will in favor of his wife, or that the wife make a will in favor of her husband. It is different from the other relations of life. It is like the relations of parent and child and child and parent. It is a domestic relation, a family relation, in which it is perfectly natural that the one should make a will in favor of the other. In this case, these parties have lived together for ten years, with more or less trouble all the time, apparently, from the evidence, although the mother-in-law, Mrs. Kultz, says that for the last two or three months before this lady's death, everything was amicable and peaceful. The will was made in April; she died in May; and Mrs. Klutz says that up until about Christmas, they were getting along very amicable and continued so up to the time of the death. I hardly think that the jury could be allowed to infer that, because there were differences between these married people, that those differences were not forgiven. The facts are that they continued to live together all this time, with the exception of certain times when it is said that they were quarelling, and he was threatening to do something to her, to lock her out or do something else, when she would go back to her mother's or some neighbors for protection; but she goes back to her husband again and remains with him. I do not think that the jury from those facts, even if they had been proven as strongly as has been attempted to be proven by the statements of the wife herself here would warrant a verdict that the hus-

band exercised this undue influence by force and fear over this woman. The witnesses testified clearly and forcibly, as witnesses usually do who are called upon to witness the execution of a will, that this lady knew what she was doing; and there is no pretense that she was not of sound mind at that time. If she had been feeble-minded or weak-minded, or anything like that, it would be a different consideration; but to allow a jury to infer from any of the facts stated in this case that the will was not her will seems to me to be beyond the direction of the court in the case of Beyer *vs.* Lefevre, 186 U. S., 144, that went up from this court, in which the Supreme Court used this language: 'We are clearly of the opinion that a jury was not, under the circumstances of this case, warranted in finding that the execution of the will was procured by fraud, coercion, or undue influence practiced or exercised upon the testatrix.' I do not go into the merits of that case, although my recollection of the case is that it was a much stronger case than is made here for the breaking of the will, and the jury had broken the will on a verdict, and it had been allowed to stand, and the case went to the Supreme Court. Continuing: 'One who is familiar with the volume of litigation which is now flooding the court can not fail to be attracted by the fact that actions to set aside wills are frequent occurrences. In such cases, the testator can not be heard, and very trifling matters are often pressed upon the attention of the court or jury as evidence of want of mental capacity, or of the existence of undue influence. Whatever rule may obtain elsewhere, we wish it distinctly understood to be the rule of the Federal courts that the will of a person found to be possessed of sound mind and memory is not to be set aside on evidence tending to show only a possibility or suspicion of undue influence. The expressed intention of the testator would not be thwarted without clear reason therefor.'"

Beyer *vs.* Lefevre, 186 U. S., 144.

Upon the question of any presumption to be drawn from the fact that a husband makes a will in favor of his wife or a wife in favor of her husband, we submit the following authorities as conclusive:

> "The rule that one occupying a fiduciary relation to another and obtaining an advantage by reason of that relation is presumed to have obtained that advantage involuntarily, does not apply in the case of testamentary provision between husband and wife."
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> Orth *vs.* Orth, 32 L. R. A., 299 and 309.

> "The deed of a child to a parent who requests it is neither presumatively or prima facie void, as having been improperly induced by the parent."
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> Murray *vs.* Hilton, 8 App. D. C., 281.

The testimony here shows that deceased and her husband, Frank Jaeger, had been living together for nine or ten years; that in the beginning of their married life, they occupied the store in the house owned or rented by the mother-in-law, and conducted therein an umbrella repair business; that shortly after they were married, friction arose between the mother-in-law and the son-in-law and also her daughter which culminated in the mother-in-law, having ejected from the house and store both her daughter and her daughter's husband, after which the caveatee and his wife established a business at another location which continued up until the time of her death. It also appears that he worked at that business with his wife, and at the time he was married he was the owner of three pieces of real estate, she owning nothing at that time save her interest with her sister referred to. That he subsequently sold two pieces of the real estate at some loss over the cost price thereof, and that the mortgage on the third piece of real estate was paid; that all of the property

which was held by the caveatee was deeded to a third party and a conveyance was made back to the husband and wife as tenants in common. It seems also that the deceased died seized and possessed of her half interest in this property and the half interest in the piece of real estate which descended to herself and sister through her father subject to the life interest of her mother. It also appears that there was some money saved by her in connection with the conduct of the business with her husband, which money was placed in the Perpetual Building Association and which, of course, can not form part of this case as it would rightfully belong to the husband whether the deceased died testate or intestate. It also appears clearly from the testimony presented that during the entire course of their married life while frictions existed upon occasions, that caveatee and the deceased never ceased to live together and to conduct their business and to present themselves to the world as living together as man and wife. It also appears that most of the friction that is alleged to have occurred between them took place sometime, and in a number of instance many years prior to the death of the testatrix, and that for sometime prior to her death everything was going smoothly between them and they were living together harmoniously as man and wife. It appears furthermore that the deceased was suffering from a trouble which did not interfere with her mind, but which made it necessary for her to undergo an operation at a hopital; that on the Wednesday before her death, the doctor who was in attendance for the first time advised her that she would have to go to a hospital. Naturally in contemplation of such an ordeal, she desired to settle her worldly affairs, and on Thursday she attended to the making of the will in her bedroom where her husband was not present, and where she was advised by a disinterested

party, a notary public, who was called in for the purpose of reducing her wishes in that regard to writing. It also appears that on Friday morning before she went to the hospital, she was able to sit up in bed and to attend to some of her usual work in connection with the umbrella business. That on Friday morning, the second day after she had been advised by her physician that she would have to go to the hospital to undergo the operation referred to, she was taken to the hospital and remained there constantly attended by her family and relatives and husband up to and until five or six days thereafter when the operation was performed, and when in connection with undergoing the operation itself, she died. The will itself is clear and distinct in its expression of the intention and desires of deceased. While it was not drawn by a man learned in the law, but simply by a notary, in direct and unmistakable terms reverts in the husband what he had made over to her of his own property and constitutes him very properly the beneficiary of the small estate coming to her by inheritance at the death of her mother. Certainly there was no situation here that would even give rise to a suspicion of the existence of undue influence, much less to make it possible to conclude there existed an elimination of free will on part of deceased or that she stood "in vinculis" as has been said by the Supreme Court must be the case before the caveators can prevail.

> "In order to cause a will or deed to be set aside on the ground of undue influence, it must be established to the satisfaction of a court that the party making it had no free will, but stood 'in vinculis.'"
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> Conley *vs.* Nailor, 118 U. S., 127.

It must also be remembered that this is not a case in which a construction of a will is asked or where there is any question raised by the evidence as to the instrument

not having been legally and with all due formalities properly executed; therefore, the position taken by counsel for the caveators for the first time in this court, as to alleged incompleteness in the terms of the instrument itself, can not be maintained and is not supported by the case of Davis *vs.* Powers, cited. That case, dealing as it does with mere formalities of execution applies to no feature of the cause at bar. Touching the suggestion that if all evidence adduced by the caveators be conceded to fall short of establishing undue influence, yet the case should be allowed to go to a jury upon the will itself, we have only to say that such doctrine has no precedent, but, on the contrary, is in the teeth of positive authority to the contrary, as has been well stated in the case of Middleditch *vs.* Williams, in which the court says:

> "A will may be contrary to the principles of justice and humanity, it may be both unnatural and unjust; yet, if it appears to have been made by a person of sufficient age and is the expression of a sound mind, the courts will uphold it. Where want of testamentary capacity or undue influence is alleged, it is the duty of the court to examine the provisions of a will to see if they furnish evidence of the truth of the charges; standing alone they are insufficient to sustain a verdict against a will."

Middleditch *vs.* Williams, 4 L. R. A., 738.

It is, therefore, respectfully submitted that the judgment of the court below should be affirmed.

WILTON J. LAMBERT,
Attorney for Caveatee.